



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

AT NAIROBI

(Coram: Maraga, CJ & President; Mwilu, DCJ & VP, Ojwang; Wanjala; Njoki; &, SCJJ)

CIVIL APPLICATION NO. 27 OF 2015

MOI UNIVERSITY.....APPLICANT

VERSUS

OINDI ZAIPPELINE.....1ST RESPONDENT

KARATINA UNIVERSITY.....2ND RESPONDENT

(Being an application for review of the decision of the Court of Appeal (Nambuye, Kiage & Kihara, JJA)

given at Nyeri on 14th October, 2015 declining to grant certification that the matter herein is one of

general public importance warranting a further appeal to the Supreme Court).

R U L I N G

[1] In its ruling delivered at Nyeri on 14th October 2015, the Court of Appeal (Kihara Kariuki, Nambuye and Kiage, JJA) declined to grant Moi University (the applicant) certification to appeal to this Court against its decision delivered on 14th April 2015. On 27th October 2015, the applicant filed this application under Articles **159(2)**, **163(4)(b)** and **259(1)** of the Constitution; **Sections 15, 16** and **21** of the Supreme Court Act, 2011 as well as **Rules 26** and **31(2)** of the Supreme Court Rules, 2012 seeking a review of the Appellate Court’s said decision declining to grant certification.

[2] The application is premised on the grounds that the Appellate Court failed to appreciate that the issue the applicant seeks a decision of this Court on is one of general public importance which transcends the circumstances of this particular case.

[3] As this Court stated in the case of **Hermanus Phillipus Steyn v Giovanni Gneccchi-Ruscione, Sup. Ct. Appl. No. 4 of 2012 [2013] eKLR**, a decision it had also made in **Peter Oduor Ngoge v. Hon. Francis Ole Kaparo & 5 Others [2012] eKLR (Supreme Court Petition No. 2 of 2012)** and reiterated in many other subsequent decisions, an applicant seeking such certification “*must satisfy the Court that the issue to be canvassed on appeal is one the determination of which transcends the circumstances of the particular case....*” If it is a point of law, he “*must demonstrate that such point is a substantial one, the determination of which will have a significant bearing on the public interest.*” The question is whether or not this threshold has been satisfied in this case.

[4] The brief facts of the matter before us are that on 27th July 2009, the applicant admitted the 1st respondent into its Central Kenya Campus at Karatina to pursue a three-year course leading to an award of a bachelor’s degree. In the course of the 1st respondent’s

studies, on 1st October 2010, the applicant, by Legal Notice No. 163 of 2010, transformed its said Central Kenya Campus into a constituent college known as Karatina University College. Paragraph 5(1) of the said Legal Notice stated that “*The degrees and postgraduate diplomas to be awarded by (Karatina) University College shall be the degrees and postgraduate diplomas conferred by Moi University.*”

[4] Just two months before the 1st respondent completed his studies, the applicant obtained a charter for its said constituent college and had it transformed into a full-fledged university known as Karatina University. Paragraph 33 of the Charter states that “*the students of the former Karatina University College who were pursuing degrees, diplomas and other certificate programmes ... shall be allowed to complete their courses and be awarded degrees, diplomas and certificates of Karatina University.*”

[6] On completion of his studies, the 1st respondent wishing to be awarded a degree by Moi University, the applicant, and not by the new and relatively unknown Karatina University, filed a case in the High Court and sought, inter alia, a mandatory injunction to compel the applicant to award him a degree. The High Court dismissed his case but on appeal, the Appellate Court reversed that decision and granted the 1st respondent the mandatory injunction he had sought. As stated, the applicant wishes to further appeal to this Court against that decision hence its application for review of the Appellate Court’s order declining certification.

[7] In their written submissions, counsel for the applicant argued that Moi University could not award a degree to a student who was no longer registered with it and whom it did not examine. On their part, counsel for the 1st respondent argued that para 33 did not apply to him as the relationship between him and Moi University was contractual which contract had not been frustrated by the operation of the law, and that his legitimate expectation was to be awarded a degree from Moi University. Moi University was therefore estopped from denying him its degree.

[8] Upon consideration of these rival submissions alongside the said principles governing the grant of certification to appeal to this Court, we find that the issue of whether a university can award a degree to a student who was no longer registered with it and whom it did not examine is a matter of general public importance. In the circumstances, we review the Court of Appeal’s decision declining certification and grant the applicant leave to file his appeal under Article 163(4)(b) of the Constitution. The costs of this application shall abide the outcome of the intended appeal.

DATED and DELIVERED at NAIROBI this 5th day of October, 2018

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D.K. MARAGA
CHIEF JUSTICE/PRESIDENT
OF THE SUPREME COURT

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P.M. MWILU
DEPUTY CHIEF JUSTICE/VICE
PRESIDENT OF THE SUPREME
COURT

.....

J. B. OJWANG
JUSTICE OF THE SUPREME
COURT

.....

S. C. WANJALA
JUSTICE OF THE SUPREME
COURT

.....

N. S. NDUNG’U

JUSTICE OF THE SUPREME

COURT

I certify that this is a true copy of the original

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SUPREME COURT OF KENYA



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